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SENATORIAL DISPUTES RESULTING FROM THE APPORTIONMENT ACT OF 1841.

BY KATHLEEN M. CLYNE.

The increase of population in the State of Illinois as exhibited by the census of 1840, made a reapportionment of representation necessary. Accordingly, the Twelfth General Assembly passed "An Act to Apportion the Representation of the Several Counties in this State," Feb. 26, 1841. This act is a masterpiece of clumsy legislation. It is so ambiguous that today the districts which it established can be determined only with the aid of the election returns. This, however, was not its greatest defect. It made no provision for the sixteen senators whose terms did not expire.

When the Thirteenth General Assembly met in December, 1842, there were many important questions to be settled; the State was practically bankrupt; the canal was unfinished; the people were desirous of curbing the power of the Mormons; and the election of a United States senator was imperative. Before any of these important questions could be taken up in the Senate, its personnel must be determined and there were four disputed seats. The question was a delicate one. The places of some of the oldest and most influential members were endangered. Any legislature which would take upon itself the exclusion of any of these men, who had not served out the term for which they had been duly elected, would be committing an unwarranted act. But the new members had been elected just as lawfully under the act passed by the last Legislature.

The most complicated dispute was that involving John Pearson, Joel A. Matteson, and Samuel Hoard. John Pearson was the hold-over senator from the district containing the counties of Cook, Will, DuPage, and McHenry. Joel A. Matteson, later governor of Illinois, was senator from the newly-formed district of Will, DuPage and Iroquois, and Samuel Hoard from the newly-formed district of Cook and Lake. The Select

Committee to which the disputes were referred brought in a report, Dec. 13, 1842, recommending that Matteson be excluded. It was argued that otherwise the counties involved would have one more senator than they were entitled to have. At the time that Matteson was elected there was, the Committee maintained, no vacancy in that district; John Pearson had been duly elected by the people and was still their lawful representative. Mr. Matteson then withdrew, but December nineteenth Governor Ford informed the Senate of John Pearson's resignation, which was to take effect January first, 1843. The same day a bill to hold a special election for senator in the district composed of Will, DuPage and Iroquois, passed both the Senate and the House. This bill is another example of the loose methods of the day. The resignation of Mr. Pearson left a vacancy in the old district of Cook, Will, DuPage, and McHenry, while the new election was ordered for the new district of Will, DuPage, and Iroquois. The election was held January second, and Joel A. Matteson was returned to the Senate. He qualified and took his seat five days later.

The exclusion of Matteson had been strongly opposed by Senator Pearson. A protest against the exclusion of him and of Gilham was made to the Senate by six members. Pearson, James, and Cavarly, all of whose seats were involved in the disputes, were among the signers. A long speech by Pearson on the resolution to declare the elections of Matteson and Gilham void, was published in the *Illinois State Register*. In this he maintained that each new district embracing counties which had not taken part in the election of a hold-over senator was entitled to another senator. He urged that the exclusion of these men would leave some counties without representatives elected by themselves, and would establish a precedent dangerous to a Republican government. Neither Matteson nor Pearson were men of irreproachable character, and the whole settlement looks like a deal between them. The *Joliet Courier*, Jan. 4, 1843, said that "efforts were made to defeat Mr. Matteson on the grounds that he bargained with the Senator from Cook, Mr. Pearson, to secure the resignation of the latter." The *Courier* said that these reports were untrue. Pearson may have expected some recompense for his resignation, for two weeks later in the Democratic caucus he was a candidate for the nomination for justice of the supreme court, but was defeated.

The second dispute was between the renowned Colonel E. D. Baker, who fell at Ball's Bluff in 1861, and Reuben Harrison, both of Sangamon county. Baker was the hold-over senator from the old district of Sangamon, Menard, Logan, and Christian counties. Reuben Harrison was elected from the newly-formed district of Sangamon. The Committee reported that Harrison was not legally a member of the Senate. It said that if Harrison were admitted, Sangamon county would have double representation, since it already had a resident senator on the floor. Menard, Logan, and Mason counties constituted one district after 1841, and having no senator within their limits, "they had an indisputable right to elect one." There seems to have been no protest against Mr. Harrison's exclusion.

The third contest was between T. M. Kilpatrick and James Gilham. Under the apportionment of 1836, Morgan county elected three senators. After Cass and Scott counties were set off from Morgan, it voted alone for one senator, with Cass for one, and with Scott for one. The term of the senator from Morgan and Cass expired in 1842, but the other two held over. The new apportionment made Cass and Scott, though not contiguous, into one district, and Morgan into another, each entitled to only one senator. Kilpatrick was the hold-over senator from the counties of Morgan and Scott. Gilham was the senator from the newly-formed district of Cass and Scott. The select committee declared that Gilham was not legally a member of the Senate; Scott, one of the counties in the new district, had participated in Kilpatrick's election; Morgan had a separate senator; and Kilpatrick resided in Scott. The Senate apparently accepted this reasoning, for Gilham was excluded, and as a result there was no senator in the Thirteenth General Assembly in whose election the voters of Cass county had participated.

The hardest case for the Senate to decide was the contest between two well known men who had both formerly served in the Legislature, Alfred Cavarly and Revel W. English. They were both newly elected. Cavarly was elected from the Counties of Greene and Jersey to fill a vacancy caused by the death of Senator John Allen, who had been elected in 1840. English was elected from the newly-formed district of Greene and Calhoun counties. The Committee in its report stated the facts, but it had been unable to reach an agreement on the case. It was finally taken up by the Senate as a committee of the whole.

deliberated on at both sessions December twentieth, and then laid on the table. The following day the Senate adopted by a vote of 22 to 18, this amendment: "That neither Mr. Cavarly nor Mr. English have been legally elected to fill the vacancy of John Allen, deceased." Mr. English, not wishing his district to be unrepresented in the Senate and realizing that these disputes were keeping them from the great work before them, resigned at once. The State Register says, "There being no further contest, the Senate rejected the whole resolution of which the above amendment was a part." Since it was not adopted, the resolution is not printed in the *Journal* and its contents have not been determined. Mr. Cavarly retained his seat.

Another case, which is notable chiefly because it was not contested, is that involving the counties of Madison, St. Clair, Monroe, and Randolph. Under the old apportionment Madison, St. Clair, and Randolph were each entitled to one senator, while Monroe was joined with Madison and St. Clair in the election of a fourth. The new law gave a senator each to Madison and St. Clair, and joined Monroe and Randolph together to form a third district, thus reducing the representation of the four counties from four to three. In each of the four old districts, except Madison, senators were elected in 1840, and were entitled to hold over. Adam W. Snyder, the senator from St. Clair County resigned, however, in 1841, to accept the Democratic nomination for governor. St. Clair and Madison counties each elected a senator in 1842 and these, with the hold-over senators from Randolph and the district composed of Monroe, St. Clair, and Madison made four senators in the Thirteenth General Assembly from these counties instead of three as provided by the new apportionment law. All of them held their seats, however, and voted throughout the session without any question of their credentials. John Pearson mentioned the case in the long speech referred to above, and said that some of the senators in question were representing counties from which they were not elected. The puzzle was apparently too complicated for the Select Committee or the Senate to solve, and as a result there was one more senator in this General Assembly than was provided for by the Apportionment Act.

The settlement of these disputes was certainly an irregular procedure. The only consistent aim appears to have been to have the specified number of senators on the floor, and even this

was not achieved. The decisions were extra-legal, and it is doubtful if they would have been tolerated had not the Thirteenth General Assembly realized that it was facing one of the greatest crises in the history of the State. The creditors were at the door clamoring for satisfaction. Such minor questions had to be pushed aside as quickly as possible and attention focused on the duty of upholding the honor of the State in a time of peril.